IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2287 OF 2005

Choudhary International Pvt.Ltd. ... Petitioner
Versus.
Central Bank of India. ... Respondents.

Shri K.K.Singhvi, Senior Counsel with Shri Mustafa Motiwala i/by M/s.PDS Legal for the Petitioner.

Shri Virag Tulzapurkar with Shri Uttam i/by M/s.Mulla & Mulla C.B.C. for the Respondents.

CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.

DATED : 7th FEBRUARY, 2006.

P.C.:

1. Heard Shri Singhvi, Senior Counsel in support of this petition. Shri Tulzapurkar appears for the Respondents. The Petitioner is a company engaged in providing and developing software amongst others in the banking sector. The Petitioner has entered into a contract with the Respondent-Bank on 31st December 2003 for providing certain facilities for the purpose of credit appraisal. That contract came to be terminated by order dated 10th December 2004. It is this order which is sought to be challenged in this petition.

2. The grievance of the Petitioner is that as per the agreement entered into between the parties, it had made the sofeware facility available at the Central Office of the Respondent and was to make it available at

five more branches. Its grievance is that those branches were not identified and the software supplied was satisfactory. The Petitioner further says that it has spent a sum of Rs.60 lakhs in this project. The Respondents on the other hand contend that the five branches wee identified, but in any case finally it was mutually agreed that initially the software will be tested at the Central Office and thereafter at the branches. It is their case that the software developed was not to their satisfaction and for that purpose it is for them to decide as to whether it was satisfactory or otherwise. It is on this back ground that they have finally terminated the agreement by their letter dated 10th December 2004.

3. Shri Singhvi appearing for the Petitioner submitted that the decision is arbitrary and irrational. As against this, Shri Tulzapurkar appearing for the Respondents has pointed out that the basis of this submission is non-identification of the branches and that despite putting in work for sometime, for no reason the work has been terminated. He explained the justification for the termination of the contract as also the fact that the five branches were identified, though subsequently the work was confined to at the Central office only.

4. In any case as the fact remains, this matter

involves disputed question of fact and what the Petitioner is praying is for specific performance of the contract which certainly cannot be resorted to by way of a writ petition. We cannot say that the Respondents' action is arbitrary or irrational and on that footing we are not inclined to entertain this petition. Petition is rejected.

5. It will be open to the Petitioner to pursue any other alternate remedy including filing of a suit which may be available. All submissions will be available to the Parties and the Court concerned will decide the matter on its own merits.

6. Shri Singhvi makes a request that the Petitioner should be allowed to withdraw its software which has been installed. Shri Tulzapurkar on instructions states that the Respondent-bank has no objection to that and on the Petitioner applying, the software will be returned within a week from the date of application.

(H.L.Gokhale, J.)

(Abhay S.Oka, J.)